IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

DATE OF DECISION: July 02, 2007.

Parties Name

Punjab State

..APPELLANT

VERSUS

Gurcharan Singh and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH
HON'BLE MRS. JUSTICE NIRMAL YADAV

PRESENT: Mr. NDS Mann, Addl. A.G., Punjab,
for the appellant.

Mr. D.S. Pheruman, Advocate,
for the respondents.

JASBIR SINGH, J.

JUDGMENT

This appeal has been filed against the judgment dated January 31, 1994, passed by the Additional Sessions Judge, Amritsar, setting aside judgment passed by the trial Court dated September 30, 1993, and acquitting the respondents of the charges framed against them under Sections 148/326/325/324/323/149 of the Indian Penal Code.

FIR No. 81 dated September 7, 1990, Ex. PA was recorded at the instance of Amrik Singh (PW1), wherein he has stated that he as well as his family members are the residents of village Kotli Korotana, Tehsil Ajnala and that the accused persons have also been residing there. 'That on

September 6, 1990, at about 7.30 PM, when complainant Amrik Singh and other members of his family were present in their house and an electric bulb fitted in the first floor of his house was also in glow, accused Gurcharan Singh, armed with a Gandasi, along with his sons Kanwaljit Singh alias Pappo and Satbir Singh, both armed with swords, Gajjan alias Jasvir Singh, armed with a Gandasi, and Malkiat Singh alias Bagga Singh armed with a Dang, fitted with a Sua, reached his Haveli and they all started rebuking the complainant and raising changers there. On this, the complainant and his brother Bagicha Singh came out from their house into their Haveli and they tried to check the accused persons from rebuking them. On this, accused Gurcharan Singh raised a Lalkara that they (complainant party) should be taught a lesson for being informers against them, on which accused Kanwaljit Singh alias Pappo inflicted a sword blow which hit the complainant in his head and sword blow inflicted by Satvir Singh also hit the complainant in his head. The Gandasi blow administered by accused Gajjan Singh alias Jasvir Singh hit said Amrik Singh also in his head. As a result of the receipt of the said injuries, complainant fell down on the ground. While he was lying on the ground, accused Gurcharan Singh administered a Gandasi blow which hit complainant Amrik Singh in his chest and the blows given by accused Bagga Singh alias Malkiat Singh with his Dang also hit the complainant on his left elbow as well as on the back side of his shoulder. When complainant's wife Dalvir Kaur, his father Teja Singh, his brother Bagicha Singh and his nephew Balkar Singh intervened to rescue him from the accused persons, they were also attacked and caused a number of injuries by them (accused). After causing the injuries, all the accused persons fled away from the scene of occurrence raising changers'. It

was further stated by him that son of Gurcharan Singh, respondent No. 1, was a terrorist. His house was being raided frequently by the police and it was suspicion of the accused party that the complainant and his family members had been informing the police and due to that grudge, they had caused injuries, as alleged in the FIR.

The injured were medico-legally examined by Dr. Krishan Kumar Sharma (PW5) on September 6, 1990, at about 9.40 PM. He found several injuries on the person of the injured, as mentioned in para 4 of the judgment of the trial Court. It is also an admitted fact that aforesaid PW5 also examined Gurcharan Singh, respondent No. 1, and Satbir Singh, respondent No. 2, on that very date and found as many as five and four injuries on their persons respectively. One injury on the person of Satbir Singh was found to be grievous in nature, being fracture of the lower end of radius of the left fore-arm. During investigation, accused-respondents were arrested. Weapons of offence were recovered. On completion of investigation, final report was put in Court for trial of the accused.

Charges were framed against the respondents, to which they pleaded not guilty and claimed trial.

Prosecution then led evidence to prove its case. After conclusion of prosecution evidence, statement of the accused -respondents was recorded under Section 313 Cr.P.C., wherein they denied allegations levelled against them. Rather they took up a stand that on September 6, 1990, the complainant party had entered their house fully armed, after scaling the wall, and caused injuries to Gurcharan Singh and Satbir Singh. It was further stated that they have falsely been implicated in connivance with the police officials. However, they led no evidence in defence.

Trial Court, on appraisal of evidence, found the respondents guilty of the charges framed against them and convicted and sentenced them accordingly vide judgment and order dated September 30, 1993. The respondents went in appeal, which was allowed. Hence this appeal.

We have heard learned counsel for the parties and gone through the record of the case.

Counsel for the appellant – State has vehemently contended that the trial Court has wrongly ignored testimony of the injured witnesses. By referring to the statement of the Doctor- PW5 and the injured witnesses – PW1 to PW4, he argued that guilt of the respondents was proved on record and they have wrongly been let off by the appellate Court below by misinterpreting the evidence on record. He further argued that the injuries on the person of two of the accused were self -suffered and benefit has wrongly been given to them on that account. It was also argued that too much importance has been given with regard to delay in lodging the FIR, which otherwise is not fatal to the case of the prosecution. He prayed that the appeal be accepted and judgment, passed by the appellate Court below be set aside and that of the trial Court be restored.

Contentions of counsel for the appellate -State have vehemently been opposed by Shri D.S. Pheruman, Advocate, who has put in appearance on behalf of the respondents. He has argued that besides simple injuries, a grievous injury was found on the person of one of the accused. By not giving any explanation, with regard to those injuries, an attempt has been made by the prosecution to suppress genesis of the occurrence, benefit of which should accrue in favour of the accused. To support his contention, he has placed reliance upon a judgment of the Hon'ble Supreme Court in

Lakshmi Singh and others v. State of Bihar, 1976 Criminal Law Journal 1736. He further contended that the complainant party was the aggressor and they had caused injuries to the respondents after trespassing into house of the respondents.

After hearing counsel for the parties, this Court feels that the present appeal deserves to be dismissed. The entire evidence has been dealt with by the appellate Court below in a very minute manner. It is not disputed that there is delay of 17 hours in getting the FIR recorded. The prosecution has failed to give any explanation for the same. On account of that, the appellate Court below has rightly held that false implication of the respondents could not be ruled out. Delay in recording the FIR per se may not be fatal to the prosecution but this fact cautions the Court to scrutinize the evidence in a thread-bare manner. Appellate Court below done the same and it was found that there existed lot of contradictions so far as manner and motive of the occurrence is concerned. As per statement of PW5 Dr. Krishan Kumar Sharma, injury No. 5 on the person of Amrik Singh, the complainant, was a penetrating wound and injury No. 6 was an incised wound. These injuries were attributed to Bagga Singh, who was armed only with a Dang (wooden stick). The appellate Court below has rightly held that an injury with a wooden stick, as found by the doctor on the person of Amrik Singh, could not have been caused. Injury caused to Teja Singh was found to be self-inflicted. Injuries on the persons of Bagicha Singh and Balkar Singh Pws were only simple. Furthermore, weapons alleged to have been used by the respondents, at the time of occurrence, were not produced in Court. In the FIR and the statements made by the prosecution witnesses in Court, no explanation has been given

with regard to injuries found on the person of two of the respondents. A grievous injury was found on the person of Satbir Singh. He was also examined at the same time by the doctor when complainant was examined. The appellate Court below has rightly come to a conclusion that the version given by the respondents appears to be more probable as compared to the allegations levelled by the prosecution.

Their lordships of the Supreme Court in Lakshmi Singh's case (supra) has held that in cases where no explanation has been given by the prosecution with regard to injuries , sustained by the respondents at the time of occurrence or in the course of altercation is an important circumstance, from which the Court can draw an inference that the prosecution has made an attempt to suppress genesis and origin of the occurrence and has not brought true picture before the Court. It can further be inferred that the witnesses, in not explaining the injuries caused to the accused, have tried to give a wrong version on material points, when appearing in the witness box. It has further been held that in a case where there is a defence version and injuries caused to the accused have not been explained, it causes a doubt so far as case of the prosecution is concerned. Same is the situation in the present case. The prosecution has failed to give any explanation with regard to injuries, received by the respondents – accused. In their statements recorded under Section 313 Cr.P.C., a counter version was given by them attributing aggression to the complainant party. No explanation was given by the complainant in that regard. In view of that, the appellate Court below has rightly held that the prosecution has failed to prove its case.

It is a case where in view of evidence on record, it can safely be said that the prosecution has failed to prove guilt of the accused. Even in

cases where two views are possible, after acquittal, in appeal benefit will go to the accused.

Their Lordships of the Supreme Court in *Allarakha K. Mansuri v. State of Gujarat,* 2002 (1) RCR (Criminal) page 748, held that where, in a case, two views are possible, the one which favours the accused has to be adopted by the Court.

A Division Bench of this Court in State of Punjab v. Hansa Singh, 2001(1) RCR (Criminal) page 775, while dealing with an appeal against acquittal, has opined as under:-

> "We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble Supreme Court in Ashok Kumar v. State of Rajasthan, 1991(1) SCC 166, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference."

Counsel for the State has failed to show that the judgment, under challenge, is perverse or based on misreading of evidence on record.

For the reasons, mentioned above, this appeal fails and the same is accordingly dismissed.

(Jasbir Singh)
Judge

(Nirmal Yadav)
Judge

July 02, 2007.
DKC